



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on January 13, 2020 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage;
- an order that the Landlords be permitted to apply the security deposit held to any monetary award granted; and
- an order granting recovery of the filing fee.

The Landlords and the Tenants attended the hearing and provided affirmed testimony.

The Landlords testified the Notice of Dispute Resolution Proceeding package and documentary evidence was served on the Tenants by registered mail. The Tenants acknowledged receipt of all of the Landlords' evidence with the exception of a document uploaded to the Dispute Management System on June 8, 2020. The Tenants testified that the documentary evidence upon which they rely was served on the Landlords by registered mail. The Landlords acknowledged receipt. Therefore, pursuant to section 71 of the *Act*, I find that the above documents were sufficiently served for the purposes of the *Act*, except for the document submitted on June 8, 2020, which has been excluded from consideration.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to a monetary order for damage?
2. Are the Landlords entitled to retain the security deposit held in partial satisfaction of the claim?
3. Are the Landlords entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. The parties agreed that a fixed-term tenancy began on January 1, 2018 and was expected to continue to December 31, 2023. However, the tenancy ended on December 31, 2019 pursuant to a Mutual Agreement to End a Tenancy dated December 28, 2019, a copy of which was submitted into evidence. During the tenancy, rent in the amount of \$2,000.00 per month was due on the first day of each month. The Tenants paid a security deposit in the amount of \$1,000.00, which the Landlords holds.

A Condition Inspection Report was submitted into evidence. However, the Landlords acknowledged the Tenants did not participate in the move-in or move-out condition inspection, and no evidence was adducted to indicate the Tenants were provided with opportunities to do so.

The Landlords' claim is set out in a Monetary Order Worksheet dated January 13, 2020. First, the Landlords claimed \$980.25 (\$35.25 + \$105.00 + \$840.00) for garbage removal and disposal. The Landlords testified that they paid the dump fees of \$35.25, that the \$105.00 was an estimate based on their time spent dealing with the garbage, and that the \$840.00 was based on an estimate which was submitted into evidence. The Landlords' claim was supported by photographs of the interior of the rental unit which depict the Tenants' belongings throughout the rental unit and multiple bags of garbage left in the rental unit.

In reply, the Tenants acknowledged some belongings were left behind. However, they testified they should not be solely responsible because of the manner in which the tenancy ended. Specifically, the Tenants suggested they were coerced into leaving and only had 13 days to prepare. In support of the Tenants' claim of coercion was an email from the Landlords which asked the Tenants to sign the Mutual Agreement to End a Tenancy after which the Tenants would receive \$2,000.00.

Second, the Landlords claimed \$813.75 for cleaning required at the end of the tenancy but testified the total of \$1,095.00 was indicated on the excluded evidence. The Landlords testified that “extensive” cleaning was required throughout the rental unit at the end of the tenancy and referred to the floors, walls, carpets, recycling, and the oven. The Landlords indicated the cleaning required is evident in the photographs submitted. The Landlords also testified the receipt submitted but excluded from consideration indicates that 36-1/2 hours of cleaning were required.

In reply, the Tenants testified they tried their best to clean the rental unit but were impeded due to a significant injury. The Tenants also testified the rental unit was dirty when they moved in, to which the Landlords stated the unit was freshly renovated just before the tenancy began. The Tenants also referred to five photographs of the rental unit taken in mid-November. The Landlords repeated that the images did not depict the condition of the rental unit at the end of the tenancy.

Third, the Landlords claimed \$364.87 to refinish the entry door. During the hearing, the Landlords withdrew this aspect of the claim. It has not been considered further.

Fourth, the Landlords claimed \$528.05 to steam clean the carpets. During the hearing, the Landlords acknowledged that this aspect of the claim was included in the cleaning already paid for. It has not been considered further.

Fifth, the Landlords claimed \$2,409.92 to replace carpets. During the hearing, the Landlords withdrew this aspect of the claim. It has not been considered further.

Sixth, the Landlords claimed \$1,040.00 to replace hardwood flooring. However, the quote submitted into evidence indicated a range from \$1,040.00 to \$2,600.00. The Landlords testified the Tenants significantly damaged the “special...expensive” hardwood in the rental unit. The Landlords testified they have located some replacement boards and intend to do the work themselves shortly.

In reply, the Tenants testified the work done by the Landlords was sub-par and questioned the quality of the wood. A photograph of the great room was referred to which appears to depict issues with individual boards.

Seventh, the Landlords claimed \$1,000.00 for drywall repairs. The Landlords testified there were holes and scratches throughout the rental unit as depicted in the photographs submitted. The Landlords specifically referenced the kitchen, halls, and master bedroom. They referred to a quote for the amount claimed but testified they did the work themselves.

In reply, the tenants noted the estimate relied upon was provided "site unseen". The Tenants also testified they lived in the rental unit for two years with six children. The Tenants acknowledged 12 wall holes related to TV mounts and a number of nail holes they "would have fixed" if there had been time. The Tenants also testified the work was "poorly done".

Eighth, the Landlords claimed \$180.08 for bathroom lighting repairs. The Landlords testified they had to repair or replace toilet paper holders and towel racks. The amount claimed was based on their own estimate after visiting Lowe's.

In reply, the Tenants testified the holders and racks were not properly mounted and fell out during the tenancy. The Tenants testified they were left under the bathroom sink when they left.

Finally, the Landlords claimed \$100.00 in recovery of the filing fee, and requested an order permitting them to retain the security deposit held in partial satisfaction of the claim.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss

In this case, the burden of proof is on the Landlords to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlords did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Landlords' claim for \$980.25 (\$35.25 + \$105.00 + \$840.00) for garbage removal and disposal, I find there is sufficient evidence before me to grant a portion of the relief sought. Photographic evidence submitted of garbage and personal items in the rental unit after the tenancy ended support the Landlords' claim. Even though the Landlords did not have receipts for each of the items above, I accept the amount of the claim was reasonable taking into consideration the condition of the rental unit at the end of the tenancy. I do not accept the Tenants' suggestion that the way in which the tenancy ended contributed to the condition of the rental unit at the end of the tenancy. I find the tenancy ended by mutual agreement and that there is insufficient evidence of coercion. I find the Landlords have demonstrated an entitlement to a monetary award in the amount of \$980.25.

With respect to the Landlords' claim for \$813.75 for cleaning required at the end of the tenancy, I find there is sufficient evidence before me to grant the relief sought. I accept the evidence of the Landlords who testified that "extensive" cleaning was required throughout the rental unit at the end of the tenancy. The Landlords' claim was supported by photographic evidence and I find the amount to be reasonable in the circumstances. I do not accept that the Tenants did their best to clean the rental unit or their suggestion that the rental unit was in the same condition at the beginning of the

tenancy. I find the Landlords have demonstrated an entitlement to a monetary award in the amount of \$813.75.

With respect to the Landlords' claim for \$1,040.00 to replace hardwood flooring, I find there is insufficient evidence before me to grant the relief sought. The Landlords' claim was not sufficiently clear. The Landlords' evidence was that the amount claimed represents the lower end of an estimated range to complete the repair. In addition, the Landlords confirmed the work has not been completed more than five months after the tenancy ended. Further, I find I am not satisfied with respect to the condition of the hardwood flooring at the beginning and end of the tenancy, and that the alleged damage was caused by the Tenants. In light of the above, I find that this aspect of the Landlords' claim is dismissed.

With respect to the Landlords' claim for \$1,000.00 for drywall repairs, I find there is insufficient evidence before me to grant the relief sought. However, the Tenants acknowledged that they lived in the rental unit with six children and that they created some holes. I accept that the Tenants created holes, scratches, and scuffs throughout the rental unit as depicted in the photographs submitted. However, as noted by the Tenants, the estimate relied upon appears to have been provided to the Landlords without the benefit of an on-site inspection. Further, the Landlords testified they did the work themselves. In light of the above, I find the Landlords have failed to establish the value of their loss. However, Policy Guideline #16 states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- *“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

[Reproduced as written.]

In this case, I find the Landlords have failed to establish a significant loss. However, I find the condition of the walls at the end of the tenancy constituted an infraction of the Landlords' right to receive the rental unit “reasonably clean, and undamaged except for reasonable wear and tear”, pursuant to section 37 of the *Act*. Accordingly, I grant the Landlords nominal damages in the amount of \$150.00.

With respect to the Landlords' claim for \$180.08 for bathroom hardware and lighting, I find there is sufficient evidence before me to grant the relief sought. The Landlords' claim was supported by photographic images depicting the missing towel racks and toilet paper dispenser, and burned-out light bulbs. I note that Policy Guideline #1 confirms tenants are responsible to replace light bulbs during the tenancy. The Landlords' claim was also supported by online advertisements indicating the price of the replacement hardware and lightbulbs. I do not accept the Tenants' testimony that the hardware was not properly installed, which evidence was not supported by any documentary evidence. I find the Landlords have established an entitlement to a monetary award in the amount of \$180.08.

Having been successful, I find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Application. I also order that the Landlords are entitled to retain the security deposit in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary order in the amount of \$1,224.08, which has been calculated as follows:

Claim	Allowed
Garbage removal and disposal:	\$980.25
Cleaning:	\$813.75
Drywall repairs (nominal damages):	\$150.00
Bathroom hardware and light bulbs:	\$180.08
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$1,000.00)
TOTAL:	\$1,224.08

Conclusion

The Landlords are granted a monetary order in the amount of \$1,224.08. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 30, 2020

Residential Tenancy Branch